2012 DoD Procurement Conference and Training Symposium

Better Buying Power – We Make It Happen

Purpose

- Highlight how contracting for FMS contributes to U.S. national security and foreign policy strategies
- Discuss the contracting officer's role in enabling the FMS process to be successful
- Challenge you to view contracting for FMS as more than just another business transaction

FMS Contracting

- Terminology
- Organizational Roles & Responsibilities
- Magnitude of FMS
- FMS Process Background
- Contracting Officer Role in FM
  - Offer, Execution, Closure
  - FMS Customer Participation
  - Pseudo FMS / Building Partnership Capacity

Security Cooperation

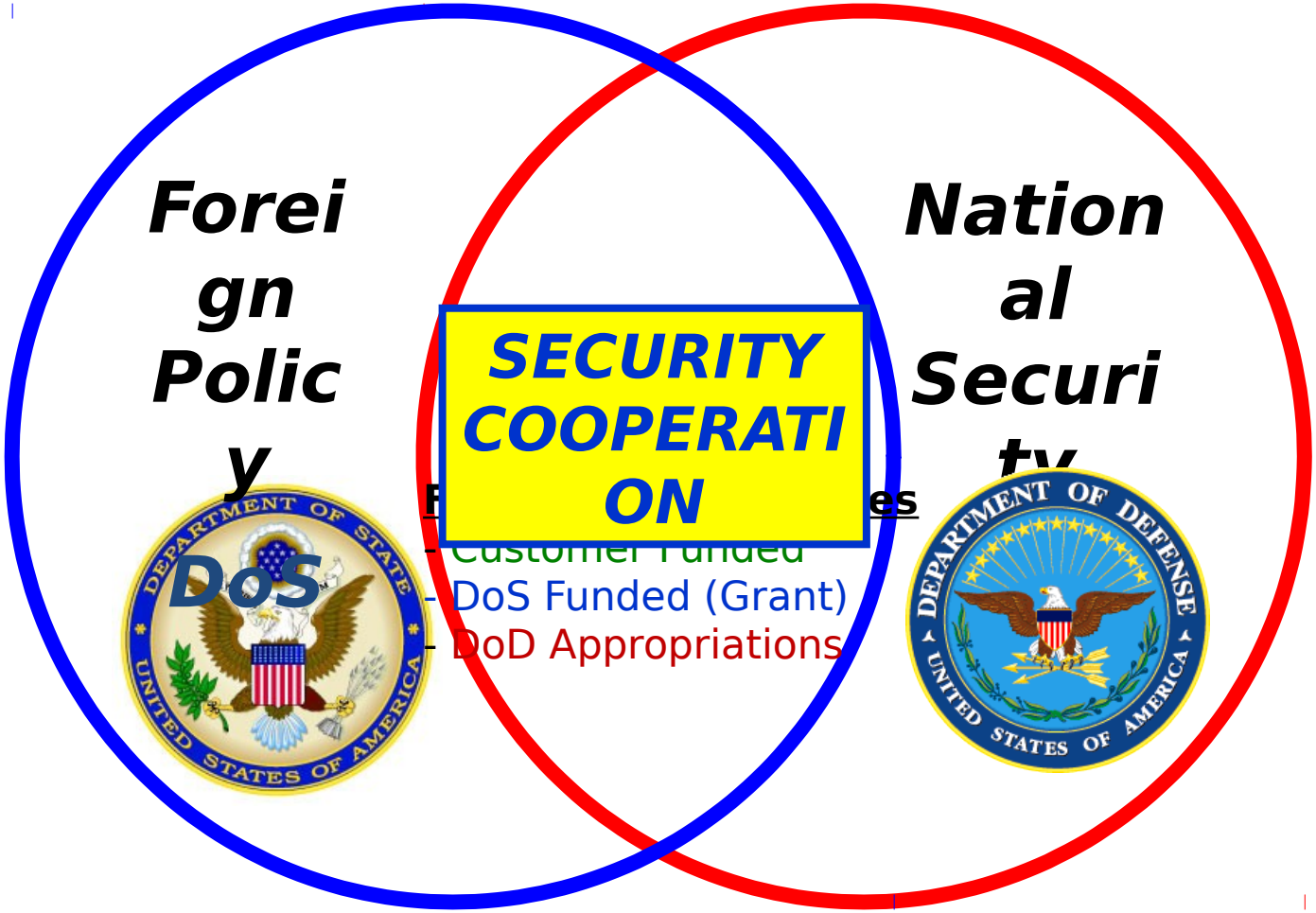
- DoD term* for all interactions w
  foreign defense establishme
  - Build defense relationships that
    promote specific US security inte
  - Develop allied & friendly military capabilities for self-defense and multinational operations
  - Provide US forces with peacetime and contingency access to a host nation.
- Foreign Military Sales (FMS) is a tool for implementing security cooperation national security strategies *Joint Pub 1-02

Security Assistance

- State Department term* fo
  group of programs throu
  which the US provide
  - Defense articles
  - Military training
  - Other defense services
- Goal: To promote national policies and objectives
- Foreign Military Sales (FMS) is a tool for implementing security assistance foreign policy

*Joint Pub 1-02

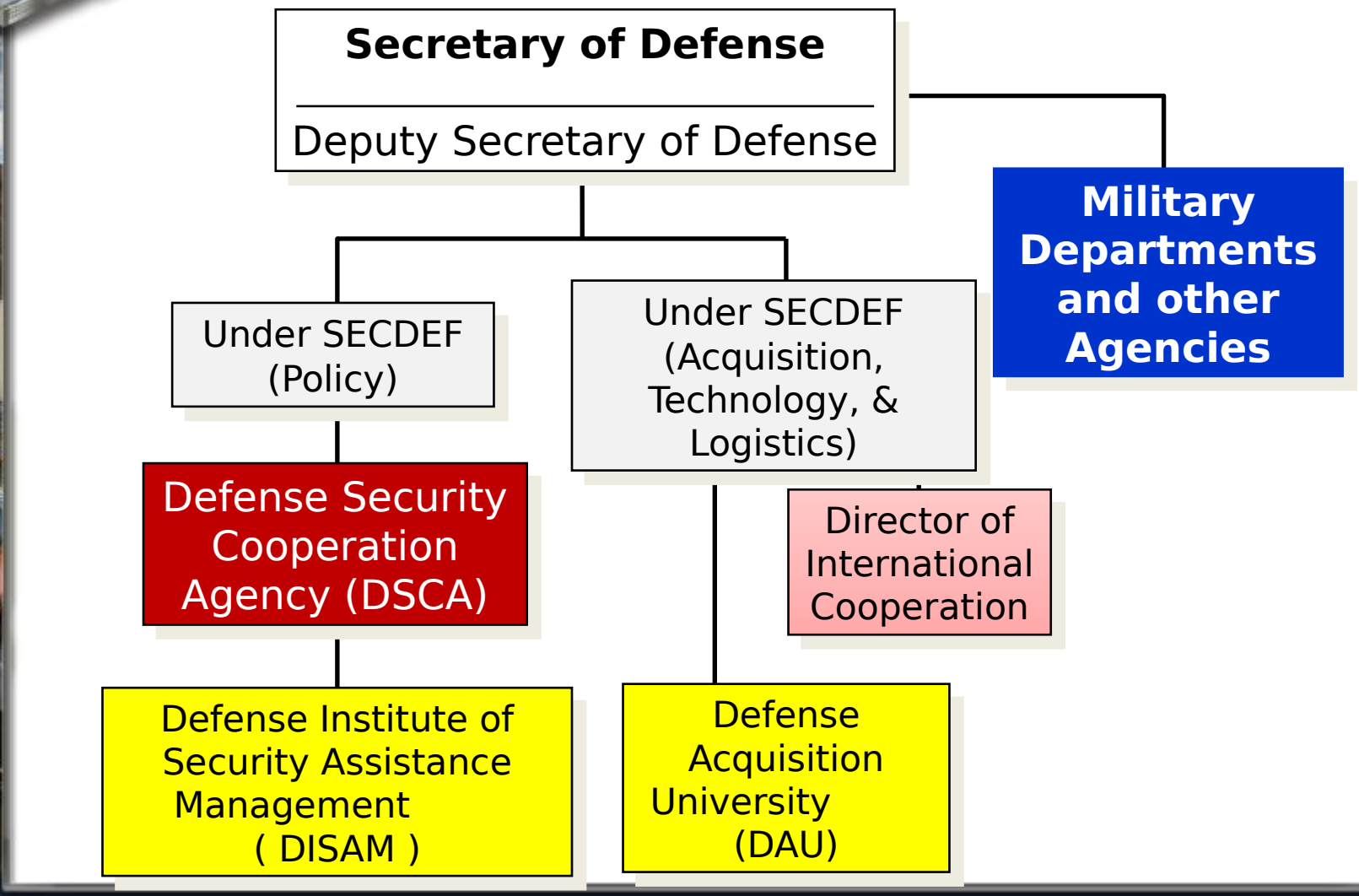
Security Cooperation



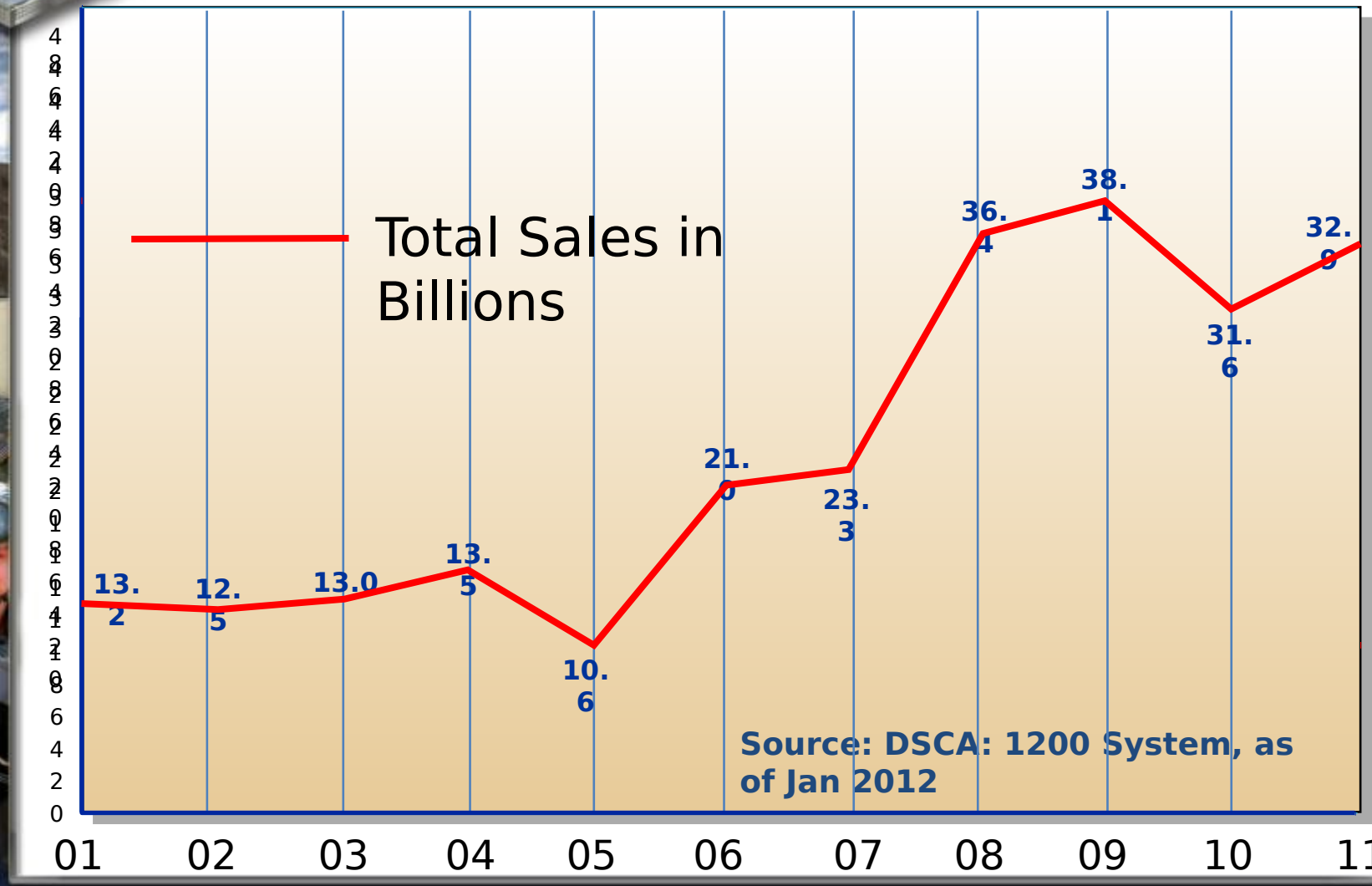
Defense Security Cooperation Agency

- OSD policy level agency with leadership, management, and oversight responsibility for DoD Security Cooperation (SC) programs
- USG interagency advocate for SC initiatives and programs
- Issues the Security Assistance Management Manual (SAMM) as SC (FMS) policy
- Operates a DoD schoolhouse
  - DISAM—Defense Institute of Security Assistance Management

DoD Relationships


Secretary of Defense
Deputy Secretary of Defense
Military Departments and other Agencies
Under SECDEF (Policy)
Under SECDEF (Acquisition, Technology, & Logistics)
Defense Security Cooperation Agency (DSCA)
Director of International Cooperation
Defense Institute of Security Assistance Management (DISAM)
Defense Acquisition University (DAU)

FMS Sales By Fiscal Year



Magnitude of FMS

If DSCA were a business, it would be a Fortune 500 Company*

2009		
Fortune 500 Rank	Company	Revenues $ Millions
48	Time Warner	46,984.0
49	Sears Holdings	46,770.0
50	Safeway	44,104.0
51	Supervalu	44,048.0
52	PepsiCo	43,251.0
53	Kraft Foods	42,867.0
54	Lockheed Martin	42,731.0
55	Hess	41,094.0
56	Best Buy	40,023.0
57	Cisco Systems	39,540.0
FMS Cases	**FMS Sales --**	38,090.0
58	Johnson Controls	38,062.0
59	FedEx	37,953.0
60	Walt Disney	37,843.0
61	Intel	37,586.0
62	Sysco	37,522.1
63	Honeywell International	36,556.0
64	Sprint Nextel	35,635.0
65	Enterprise GP Holdings	35,469.6
66	GMAC	35,445.0
67	Ingram Micro	34,362.2

2010		
Fortune 500 Rank	Company	Revenues $ Millions
61	Northrop Grumman	35,291.0
62	Intel	35,127.0
63	Aetna	34,764.1
64	New York Life Insurance	34,014.3
65	Prudential Financial	32,688.0
66	Caterpillar	32,396.0
67	Sprint Nextel	32,260.0
68	Allstate	32,013.0
69	General Dynamics	31,981.0
70	Morgan Stanley	31,515.0
FMS Cases	**FMS Sales --**	31,600.0
71	Liberty Mutual Ins. Group	31,094.0
72	Coca-Cola	30,990.0
73	Humana	30,960.4
74	Honeywell Int.	30,908.0
75	Abbott Laboratories	30,764.7
76	News Corp.	30,423.0
77	HCA	30,052.0
78	Sunoco	29,630.0
79	Hess	29,569.0
80	Ingram Micro	29,515.4

2011		
Fortune 500 Rank	Company	Revenues $ Millions
73	FedEx	34,734.0
74	Hess	34,613.0
75	Ingram Micro	34,589.0
76	Johnson Conotrols	34,305.0
77	Aetna	34,246.0
78	Amazon	34,204.0
79	Humana	33,868.2
80	Ent. Products Partners	33,739.3
81	Honeywell Int.	33,370.0
82	Libert Mutual Ins. Grp	33,193.0
FMS Cases	**FMS Sales -**	32,900.0
83	News Corp.	32,778.0
84	DuPont	32,733.0
85	Sprint Nextel	32,563.0
86	General Dynamics	32,466.0
87	TIAA-CREF	32,224.9
88	Delta Airlines	31,755.0
89	Allstate	31,400.0
90	HCA Holdings	30,683.0
91	American Express	30,242.0
92	Google	29,321.0

* Based on Foreign Mililtary Sales Figures for Fiscal Years 2009, 2010 ans 2011 when compared to the FortuFortune 500 List for Calendar Years 2009, 2010 and 2011. Fortune 500 Rankings retrieved from http://money.cnn.com/magazines/fortune/fortune500/2011/ .

Magnitude of FMS

Implementing Agency	Number of Open Cases	Total Case Value (Billions)
Army	4,809	135.3
Navy	3,963	74.2
Air Force	3,394	168.4
Other Agencies	766	7.0
Total	12,932	385.0

As of 9 Mar 2012

Global Defense Market

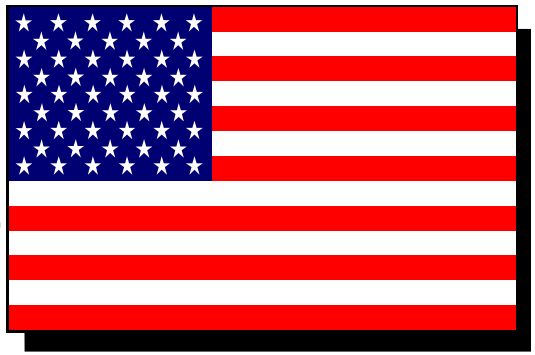
Global Competition

DoD Preference

SAMM C4.5.8

DoD prefers that countries friendly to the US fill defense requirements with US origin items.

- Foreign Policy
- Military Relationship
- Interoperability
- Economies of Scale
- Defense Industrial Base

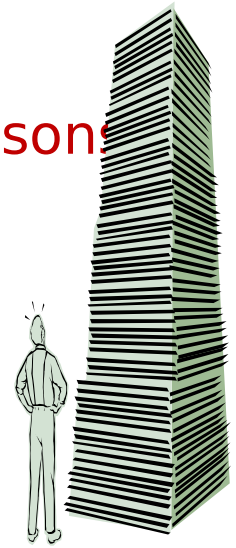


FMS Benefits and Protection

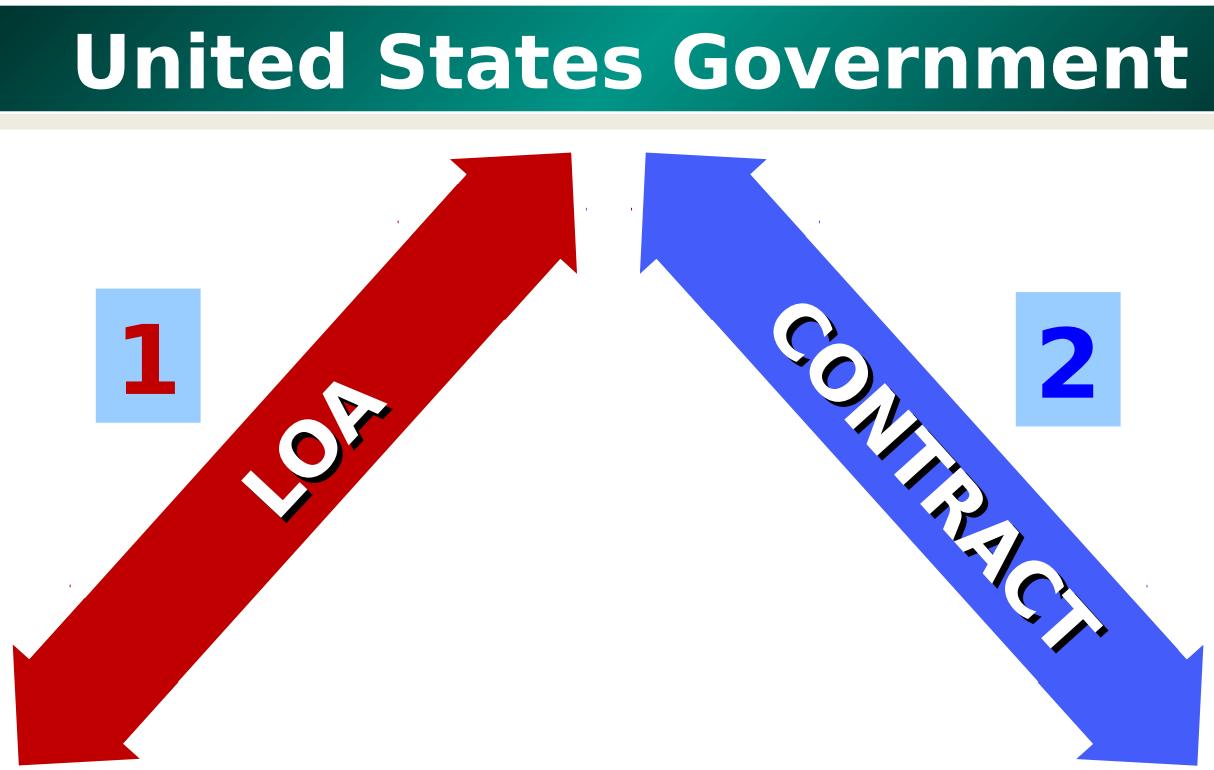
SAMM C6.3.1

Acquisition for FMS will be in accordance with DoD regulations and procedures.

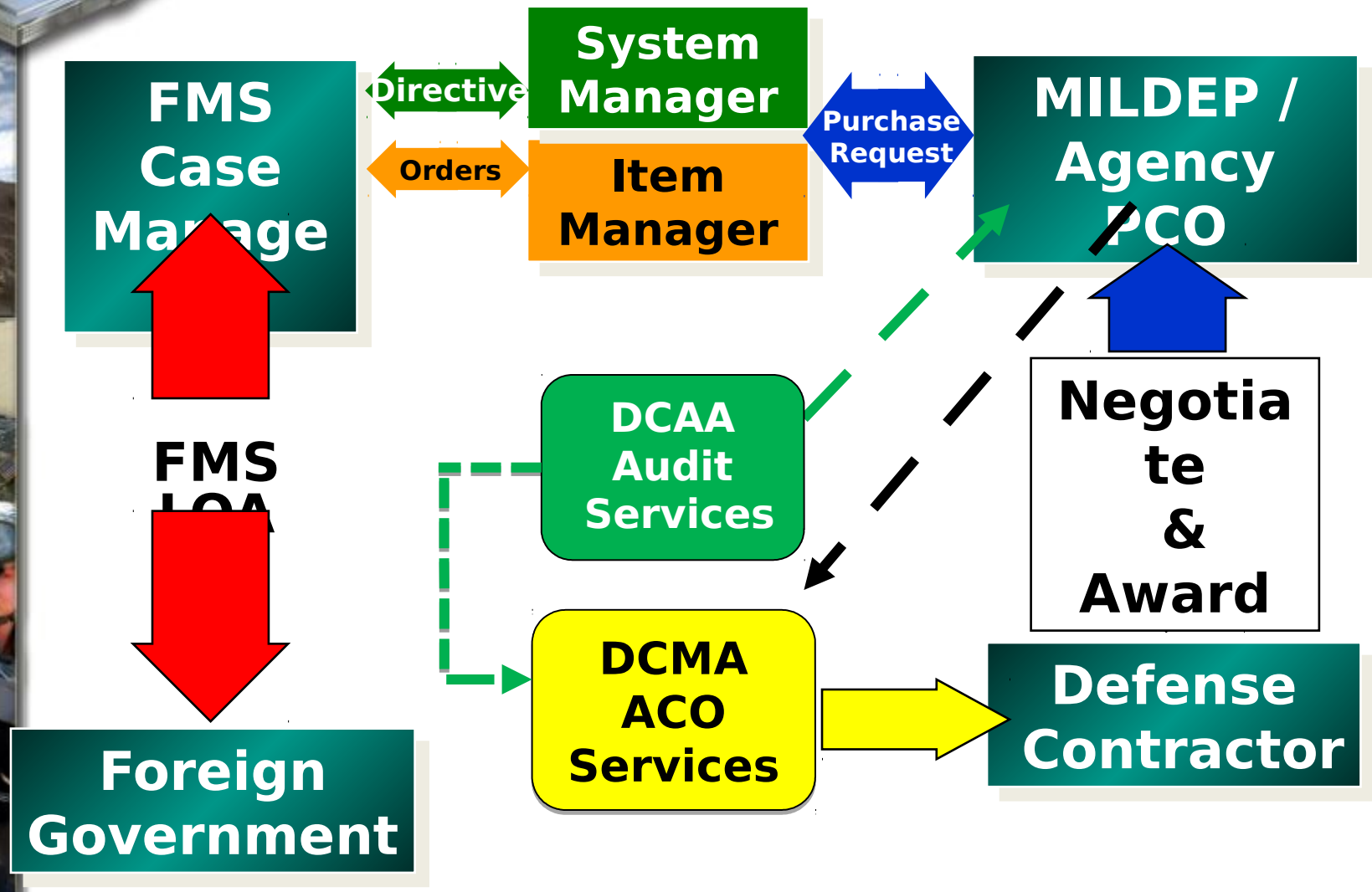
This affords the foreign purchaser the same benefits and protection that apply to DoD procurement and is one of the principal reasons why foreign governments and international organizations prefer to procure through FMS channels.



FMS Relationships



FMS Functional Relationships



Letter of Offer and Acceptance (LOA)

United States of America
Letter of Offer and Acceptance (LOA)
BN-D-YCY
ROYAL HUMDINGER II

Based on (DISAM) Government of Bandaria (GOB) letter dated (continued on page 2)

Pursuant to the Arms Export Control Act, the Government of the United States (USG) offers to sell to the Embassy of Bandaria, Office of the Air Attache, 2468 16th Street NW, Washington, DC 20009-2468, the defense articles or defense services (which may include defense design and construction services) collectively referred to as "items," set forth herein, subject to the provisions, terms, and conditions in this LOA.

This LOA is for 94 SL-HUM-120Z Humdinger Missiles, including SL-LAU-HUM-999A/A missile launchers, containers, two years initial spare parts, support (continued on page 2)

Estimated Cost: $104,224,392 Initial Deposit: $2,613,552

Terms of Sale:
Cash Prior to Delivery
Dependable Undertaking

Congressional Notification: 10-99

This offer expires on 30 September 2010. Unless a request for extension is made by the Purchaser and granted by the USG, the offer will terminate on the expiration date.

This LOA consists of page 1 through page 26.

The undersigned are authorized representatives of their Governments and hereby offer and accept, respectively, this LOA:

	13 Aug 2010		28 Sep 2010
US Signature	Date	Purchaser Signature	Date
CANCY Z. BUDDSON			
Typed Name and Title		Typed Name and Title	
COMMANDER, 555th INT'L GROUP (AFSAC)			
Implementing Agency		Agency	

DSCA Reviewed/Approved 13 Aug 2010
DSCA Date

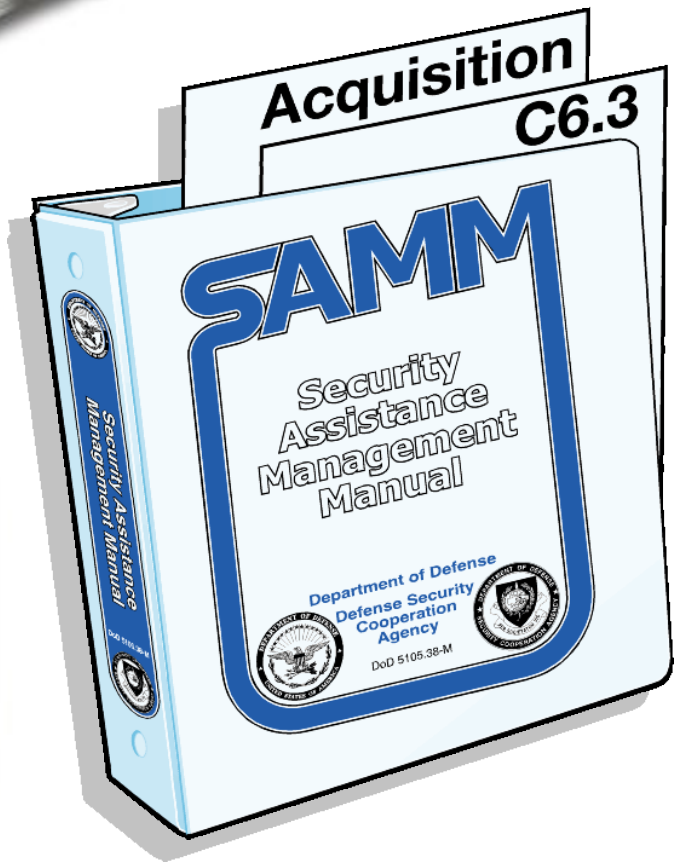
Information to be provided by the Purchaser:
Mark For Code_(A)_, Freight Forwarder Code_(2)_, Purchaser Procuring Agency Code_B_,
Name and Address of the Purchaser's Paying Office: Embassy of Bandaria, Office of Finance & Procurement, 2468 16th Street NW, Washington DC 20009-2468

Letter of Offer and Acceptance (LOA)

Items to be Supplied (costs and months for delivery are estimates):

(1) Itm Nbr	(2) Description/Condition		(3) Qty, Unit of Issue	(4) Costs (a) Unit	(b) Total	(5) SC/MOS/ TA	(6) Ofr Rel Cde	(7) Del Trm Cde
001 D3 47	B1Z 144001HUM120Z MISSILE, SURFACE LAUNCH, HUMDINGER, SL-HUM-120Z (DISAM) SL-HUM-120Z Humdinger Surface Launched, Ground to Air, Medium Range Missile (Note(s) 1, 19, 20, 21, 23, 35)	(Y)(M)(E) (IV)	94 EA	$837,055.00	$78,683,170	P(1-60) TA5	X	7
002 D3 47	B1Z 1440SLHUMLAUZ LAUNCHER, HUMDINGER SL-HUM-LAU-999A/A (DISAM) Humdinger Surface to Air Launcher, SL-HUM-LAU-999A/A (Note(s) 2, 21, 31, 35)	(Y)(M)(R) (IV)	16 EA	$38,706.23	$619,300	P(1-36) TA5	X	7
003 D3 47	B1Z 692001CTM120Z MISSILE, HUMDINGER, TRAINING, SL-CATM-120Z (DISAM) Humdinger Training Missile, CATM-120Z (Note(s) 3, 21, 35)	(S)(M)(E) (IV)	10 EA	$48,884.00	$488,840	P(1-48) TA5	X	7

FMS Acquisition Policy



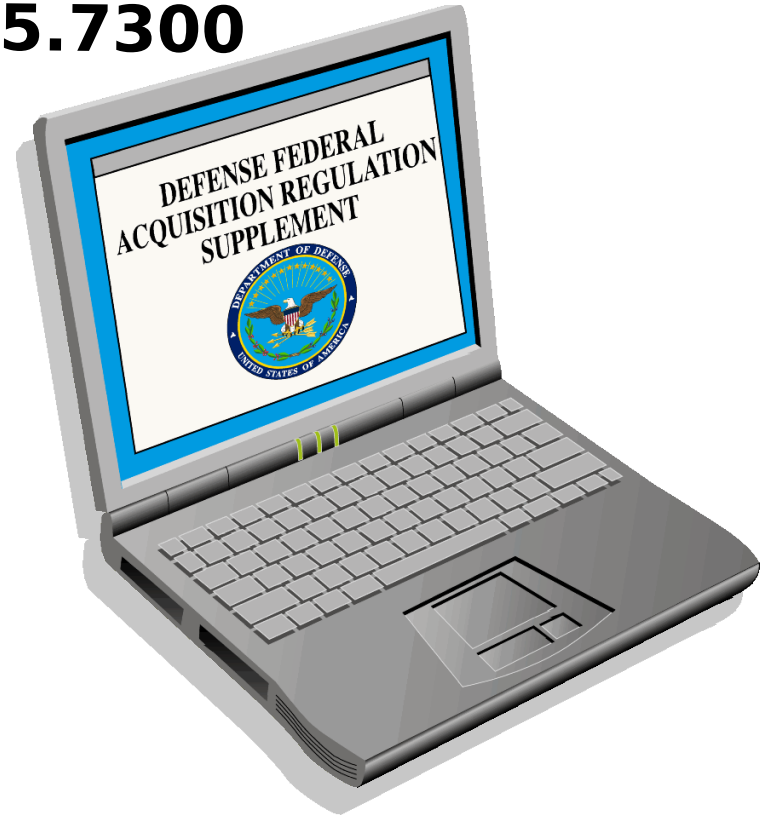
1. FAR / DFARS Authority
2. Cost / Pricing Data
3. Incentive Clauses
4. Sole Source Requests
5. Purchaser Involvement
6. Contract Data Requests
7. Contingent Fees
8. Warranties
9. Offsets

http://www.dsca.mil/samm/

DFARS FMS Policy

Acquisitions for FMS
Subpart 225.7300

- 7300 - Scope
- 7301 - General
- 7302 - Guidance
- 7303 - Pricing
- 7304 - Customer Involvement
- 7305 – Limitation of Liability
- 7306 – Offsets
- 7307 – Contract Clauses



Subpart 225.7302 – Guidance (PGI)

Contracting Officer **will** assist the MILDEP responsible for preparing the LOA by—

(1) Working with **prospective contractors** to-

- (i) Identify**, in advance of the LOA**, any unusual provisions or deviations;
- (ii) Advise the contractor if the MILDEP expands, modifies, or does not accept any requirements proposed by the contractor;
- (iii) Identify any logistics support necessary to perform the contract; and
- (iv) For noncompetitive acquisitions over $10,000, **ask the prospective contractor for information on price, delivery, and other relevant factors**; and

Subpart 225.7302 – Guidance (PGI)

(2) Working with the MILDEP responsible for preparing the LOA to—

- (i) Assist, as necessary, in preparation of the LOA;

- (ii) Identify and explain all unusual contractual requirements or requests for deviations; and

- (iii) Assist in preparing the pric availability data.

Contracting Officer in LOA Offer

- Realistically set customer expectations
  - Total Cost
  - Delivery Schedule
  - Expenditure Profile
- Identify any unique issues to be ad with cu
- Review and advise on customer generated sole source requests
- Establish extent of customer participation

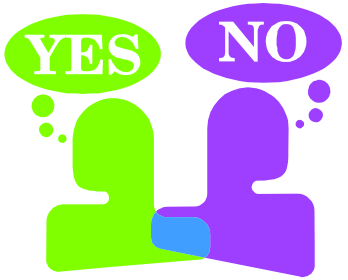
Estimated Payment Schedule

Payment Date	Quarterly	Cumulative
Initial Deposit	$1,100,000	$1,100,000
15 Jun 2012	600,000	1,700,000
15 Sep 2012	800,000	2,500,000
15 Dec 2012	700,000	3,200,000
15 Mar 2012	900,000	4,100,000

FMS Sole Source

SAMM C6.3.4

- Customer request must be based on objective needs
  - Faster delivery for urgent requirement
  - Specific nonstandard source
  - History with vendor
  - Standardization
  - Customer source selection

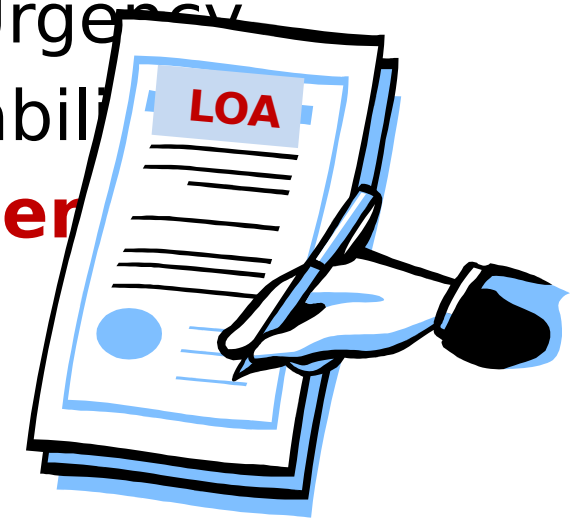


- Advise customer of contractors that:
  - Poor past performance
  - No prior experience at task
  - Ineligible for contracts
  - Represent high risks

FMS Sole Source

FAR 6.3 Other Than Full & Open Competition

- Single Responsible Source
- Unusual & Compelling Urgency
- Maintain Industrial Capability
- **International Agreement**
- Required By Law
- National Security
- Public Interest



LOA & Contract Relationship

SAMM C6.3.5

Discussions with the foreign purchaser must be undertaken during the development of the LOA … to assure that the contracting community has all the data required to award a contract consistent with contracting regulations and the foreign country desires.

Subpart 225.7303 – Pricing

- Use same principles as in pricing other defense contracts
- Recognize the reasonable & allocable cost of doing business with an international customer, even though costs might not be recognized in the same amounts in DoD only contracts
  - Selling expenses
  - Product support and post delivery service expense
  - Offset costs
  - Other: IR&D/B&P, etc.

Contracting Officer in LOA Execution

- SAMM C6.3.3 - The Case Manager and contracting officer work together to make sure the contract and the LOA are consistent.
- SAMM C9.9.3 - Payment schedules updates are necessary to reflect revisions to delivery schedules, pricing updates, contract award dates, and contractor payment milestones.

Subpart 225.7301 – Guidance (PGI)

- Separately identify FMS requirements in solicitations
  - Contract CLIN / SubCLIN Structure and ACRNS
- Ensure LOA terms / country unique requirements are incorporated into contract
- Comply with Defense Transportation Regulation, Part II requirements for packaging, labeling and documentation
  - Appendix E: Security Cooperation Shipments (34 pages)
  - Transportation plan required for classified; arms, ammo & explosives; hazardous
- Require a DD 250 to accompany shipment
  - In addition to WAWF
  - Info needed for transportation and customs clearance

Colors of "FMS" Funds

Customer Cash

- Customer Source
- No Year Limits
- DFARS "Cost of International Business" Applies

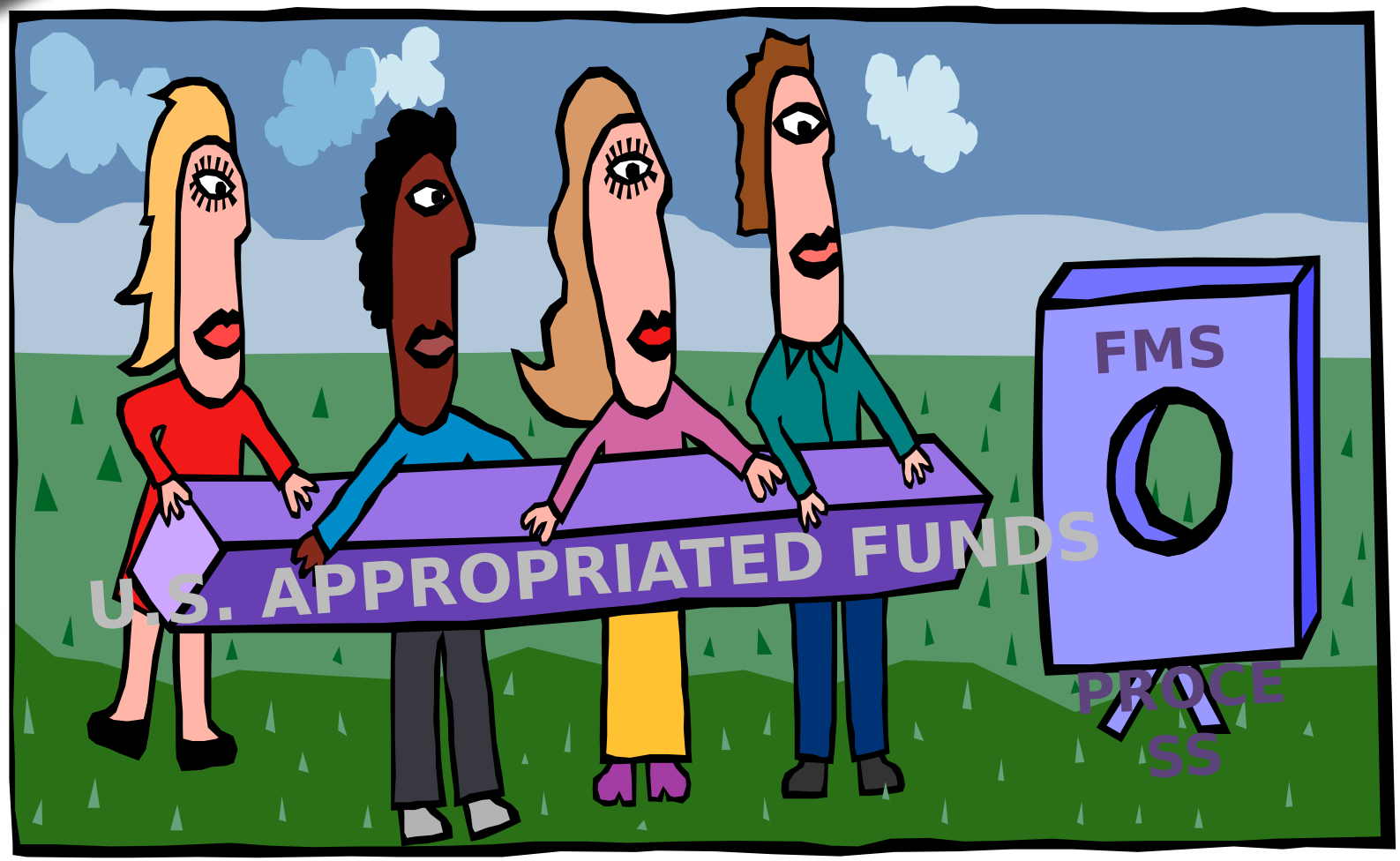
Dept of State

- Foreign Military Financing
- No Year Limits
- Excluded in DFARS Cost of International Business

Dept of Defense

- Appropriated to DoD
- Year Limits
- Normal DoD Cost Allowability Rules
- Pseudo-cases

Pseudo FMS Funds Management



Building Partnership Capacity

Pseudo FMS = Building Partnership Capacity (BPC)

- PGI 225.7300 – The FMS acquisition infrastructure is also used to execute cases funded with US appropriated funds under special authority to build partner capacity
- Budget authority for BPC/pseudo cases is executed from the FMS Trust Fund
- Lines of accounting look like no-year money (**97 X 8242**), BUT must be administered per the appropriation rules
- PGI 225.7301 – For pseudo LOAs, ensure that the contract is consistent with the period of funds availability

Pseudo - LOA

United States of America
Letter of Offer and Acceptance (LOA)
H2-P-LZZ
Bandaria, Sec 1206 PL 109-163/PL 111-242 (Non-FMS)

Based on funds provided and the written request from the (continued on page 2)

Pursuant to the Arms Export Control Act, the Government of the United States (USG) offers to sell to the Department of Defense the defense articles or defense services (which may include defense design and construction services) collectively referred to as "items," set forth herein, subject to the provisions, terms, and conditions in this LOA.

This LOA provides 7 Meter Rigid Inflatable Boats (RHIBs), 4.7 Meter Rigid Inflatable Boats and support.

Estimated Cost: $6,000,000 Initial Deposit: $6,000,000

Terms of Sale:

Cash with Acceptance 1206PL109-163 as amd/PL111-242 $6,000,000

This offer expires on 5 September 2011. Unless a request for extension is made by the Purchaser and granted by the USG, the offer will terminate on the expiration date.

This LOA consists of page 1 through page 12.

The undersigned are authorized representatives of their Governments and hereby offer and accept, respectively, this LOA:

	1 Sep 2011		1 Sep 2011
US Signature	Date	Purchaser Signature	Date
GLEN C. ACKERMANN Director, OURCOM Division		(P.L. 109-163/P.L. 111-242 (Non-FMS No Purchaser Signature Required)	
Typed Name and Title		Typed Name and Title	
Navy International Programs Office			
Implementing Agency		Agency	
DSCA Reviewed/Approved	1 Sep 2011		
DSCA	Date		

Information to be provided by the Purchaser:
Mark For Code_B_, Freight Forwarder Code_X__, Purchaser Procuring Agency Code_P_, Name and Address of the Purchaser's Paying Office:_____

Pseudo - LOA

Note 3. CASE CLOSURE - SECTION 1206 OF P.L. 109-163, AS AMENDED, P.L. 111-242 PROGRAMS.

This case must be fully reconciled and closed by July 31, 2016.

Note 4. FUNDS, PURPOSE, AVAILABILITY AND AMOUNT - SECTION 1206 OF P.L. 109-163, AS AMENDED, P.L. 111-242 PROGRAMS.

The funds financing this Pseudo Letter of Offer and Acceptance (LOA) are expiring funds and are subject to all the requirements and restrictions under the heading of SECTION 1206 OF P.L. 109-163, AS AMENDED, P.L. 111-242. The funds provided are in support of authority to build the capacity of foreign military forces and carry the same time, purpose, and availability restrictions associated with fund source 9710100, DoD Operation and Maintenance (O+M) or other funds that may be available for use in FY 2011.

a. Failure to obligate FY 2011 O+M funds during the period of availability ending on 30 September 2011 will render them unavailable for new obligations after that date.

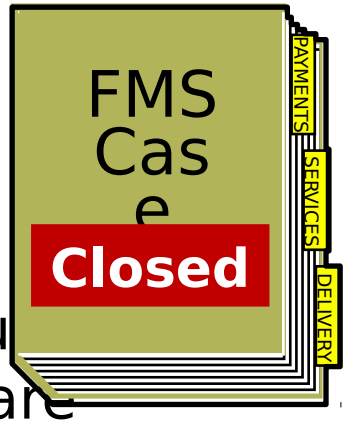
b. FY 2008 O+M funds must be obligated by September 30, 2011 and must be expended on or before July 31, 2016.

c. Total funds available for expenditure against this Pseudo LOA are limited to the value of $ 6,000,000.

d. Amendments or Modifications to this Pseudo LOA are only authorized with DSCA written approval.

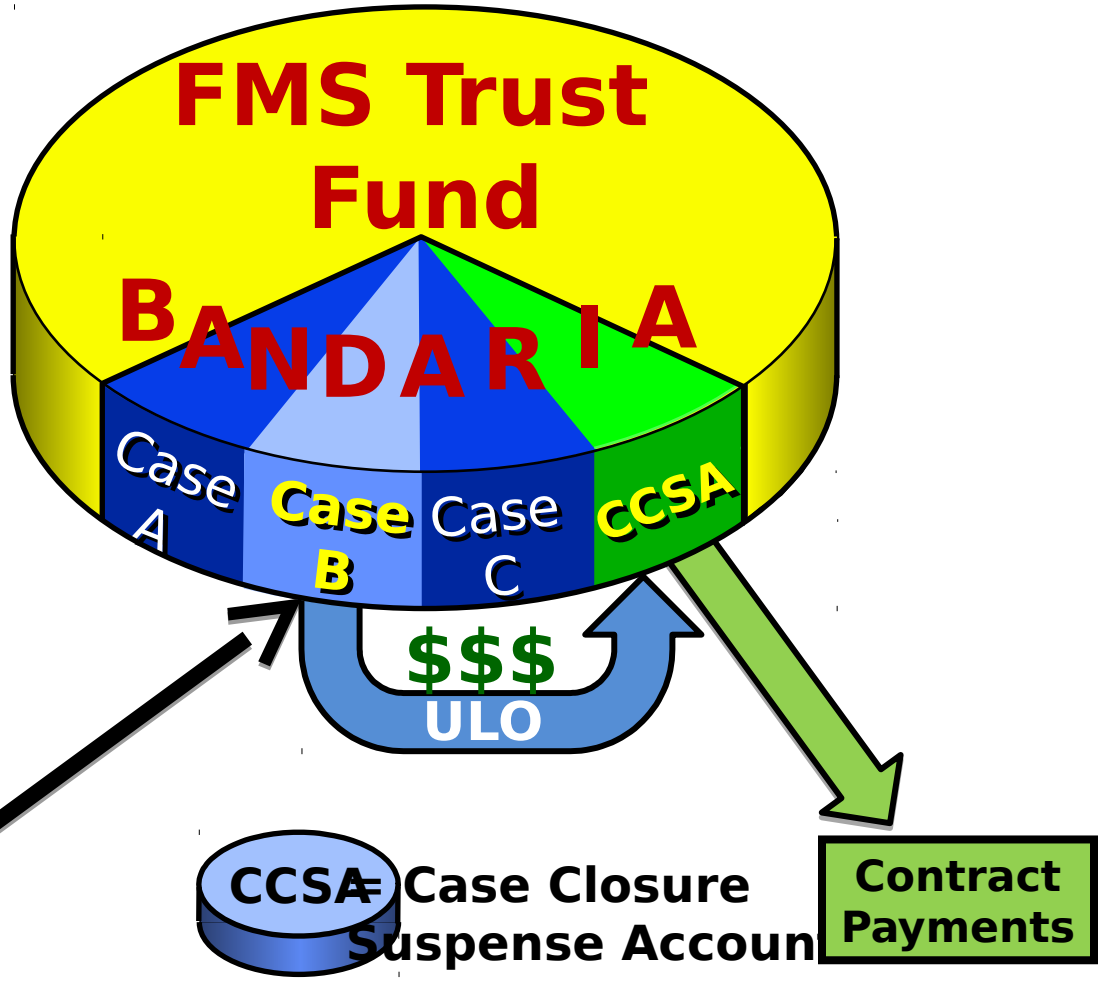
Contracting Officer in LOA Closure

- Traditional FMS:
  - Preferred : Close contract – permits final FMS closure
  - Alternative: For open contracts, provide an assessment of each respective FMS customer's remaining contractual liability
    - Permits interim case closure
- Pseudo / BPC FMS:
  - Preferred : Close entire contract
  - Alternative: For open contracts, ensu
    CLINs supporting pseudo FMS are physically delivered and funds disbursed (i.e., no ULOs) prior to funds expiration



CO in LOA Closure Phase

Accelerated Case Closure Procedures ACCP



FMS Unique

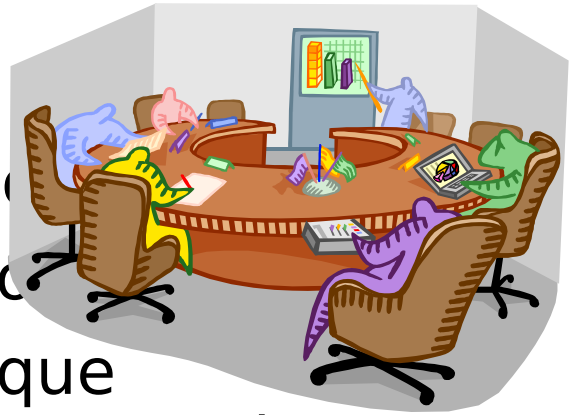
- FMS Customer Participation
- Foreign Disclosure – NDP 1
- Security Requirements
- Transportation plans (heavy focus needed here because don't have U.S. infrastructure in place when items are delivered in country. (Delivering to Djibouti instead of Ft Hood, TX).
- Freight forwarders, Documentation, DD250's, WAWF, Title transfer
- Maintenance/Sustainment – Life Cycle maintenance building "Partnership Capacity"
- Payment Instructions
- CLIN / Sub-CLIN structure

FMS Customer Participation

DFARS 225.7304

At contracting officer discretion, customer can participate in discussions with industry on:

- Technical Specifications
- Delivery Schedules
- Price/Performance Trade
- Special Warranty Provisio
- Other Requirements Unique to FMS Purchaser



FMS Customer Participation

DSCA Policy Memo 09-60

We have customers who are interested in actively participating in FMS acquisitions, but believe they are being summarily shut out of the process. I request that you encourage each of your acquisition communities to take up the spirit of DFARS 225.7304 and actively seek opportunities for customer participation in DoD acquisitions for FMS.

Jeffrey A. Wieringa
Vice Admiral, USN
DSCA Director

FMS Customer Participation

OUSD AT&L DPAP Memo, 21 July 2011

The FMS program is… an instrument of US foreign policy… to deter and defend against aggression, facilitate common defense and strengthen the security of the US.

Many FMS customers have voiced interest in actively participating in FMS acquisitions. I ask that you seek opportunities to enhance FMS customer involvement in your acquisition programs in order to foster better understanding, strengthen alliances, provide transparency, and build customer confidence and teamwork.

Richard Ginman
Director - DPAP

Conclusion

- Contracting for FMS is more than just than just buying stuff
- FMS leverages DoD’s acquisition infrastructure to:
  - Promote strategic relationships
  - Achieve national security (DoD) and foreign policy (DoS) objectives
  - Provide enabling capabilities to partners for the common defense
- FMS value does not begin at physical delivery, it includes the procurement process itself
- Contracting Officers are essential enablers to successful FMS program development, execution and closure

In other words…

It is not just the destination (i.e., physical delivery), but also the journey that matters.

Points of Contact

Jeffrey Grafton, Defense Institute of Security Assistance Management (DISAM)

(937) 255-0397 or jeffrey.grafton@disam.dsca.mil

Dave Lewis, Defense Acquisition University, Midwest Region, DAUMW-CI

(937) 781-1066 or david.lewis@dau.mil

Michele Kennedy, Defense Security Cooperation Agency, DSCA DBO-FPA

(703) 602-0773 or michele.kennedy@dsca.mil

Jeff Grover, OSD-AT&L (DPAP/CPIC)

(703) 697-9352 or jeffrey.grover@osd.mil

THANK YOU!

QUESTIONS???